

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LEE ROY ROMERO,

Plaintiff,

v.

Civ. No. 07-1093 MV/RHS

OFFICER ERIC SCHUM,
an Officer Employed by the
New Mexico State Police,
Individually,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion *in limine* No. 2: Medical Records Bates Stamped 1/25 Pursuant to Rules 402, 403, and 404(a)(b) (Doc. No. 61, filed April 21, 2009). For the reasons stated below, the Court will **DENY** the Motion.

Plaintiff moves the Court to exclude publication of his medical records because they contain irrelevant information which is inadmissible under Rule 402. (Motion at 2). Plaintiff did not attach the contested medical records to his Motion or identify the irrelevant portions of those medical records. To the extent that those medical records provide evidence of pre-existing medical conditions, they are relevant and admissible.

Plaintiff states that "if asked, Plaintiff Romero will testify, as he did so in his deposition, he suffered from a pre-existing left shoulder injury, a pre-existing back injury and a pre-existing anxiety disorder." (Motion at 2). Plaintiff argues that relevant medical information in the medical records should be excluded from publication on the basis that it will be merely cumulative of his testimony. (*Id.*). FED. R. CIV. P. 403 provides that relevant evidence *may* be excluded if it would

result in a needless presentation of cumulative evidence. The Court cannot, based upon the information provided in the Motion and not knowing what Plaintiff's testimony will be, determine at this time that the medical records would be needlessly cumulative.


Plaintiff argues that evidence in the medical records of Plaintiff's "unrelated social history, including but not limited to, drug and/or alcohol use" should be excluded because it would be more prejudicial than probative, waste time and only confuse the jury." (Motion at 2-3). Plaintiff did not attach the contested medical records to his Motion or identify the challenged portions of the medical records.

Defendant submitted the proposed medical records exhibits to the Court via email, with a copy to Plaintiff's counsel, on May 19, 2009. The Court reviewed the 27 pages of medical records and finds that the probative value of those records is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or waste of time.

The Court will deny the Motion (Doc. No. 61, filed April 21, 2009) to exclude the medical records.

IT IS SO ORDERED.

Dated this 29th day of May, 2009.



MARTHA VAZQUEZ
CHIEF UNITED STATES DISTRICT JUDGE

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